

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

JOHN WALDRON,

Plaintiff,

v.

DONALD GAETZ, *et al.*,

Defendants.

Case No. 11-cv-242-JPG-PMF

**MEMORANDUM AND ORDER**

This matter comes before the Court on plaintiff John Waldron's appeal of Magistrate Judge Philip M. Frazier's June 4, 2012, order (Doc. 40) granting the motion of defendants Jack Ashby and Charles Parnell for leave to amend their answer and affirmative defenses to add an affirmative defense based on *Heck v. Humphrey*, 512 U.S. 477 (1994) (Doc. 35). Magistrate Judge Frazier noted that he did not have enough facts at the time to determine that the defense was futile. Plaintiff John Waldron argues that amendment is futile because *Heck* does not apply in his case.

A district court reviewing a magistrate judge's decision on nondispositive issues should modify or set aside that decision if it is clearly erroneous or contrary to law. See Fed. R. Civ. P. 72(a); 28 U.S.C. § 636(b)(1)(A). The Court may also *sua sponte* reconsider any matter determined by a magistrate judge. L.R. 73.1(a); *Schur v. L.A. Weight Loss Ctrs., Inc.*, 577 F.3d 752, 760 (7th Cir. 2009).

The Court has reviewed Magistrate Judge Frazier's June 4, 2012, order and finds that it is not clearly erroneous or contrary to law. The Court further sees no reason to reconsider that ruling. Waldron will suffer no prejudice from adding the *Heck* affirmative defense; whether such a defense has merit will be determined later in this case. Accordingly, the Court

**AFFIRMS** that order (Doc. 40) and **OVERRULES** the defendant's appeal (Doc. 43).

**IT IS SO ORDERED.**

**DATED: July 10, 2012**

s/ J. Phil Gilbert  
**J. PHIL GILBERT**  
**DISTRICT JUDGE**